IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 7.12.2007

CORAM

THE HONOURABLE MR. JUSTICE K. MOHAN RAM

CRIMINAL REVISION CASE NO.1805 OF 2007
AND M.P.NO.1 OF 2007

Saravanakumar ... Petitioner

Vs.

Thenmozhi ... Respondent

Criminal Revision Petition filed praying to set aside the order passed by the learned District Munsif-cum-Judicial Magistrate, Thittakudi in CMP.NO.1397 of 2007 dated 30.10.2007.

For Petitioner : Mr. G. Anabayachozhan

O R D E R

The above criminal revision petition has been filed praying to set aside the order passed by the learned District Munsif-cum-Judicial Magistrate, Thittakudi in CMP.NO.1397 of 2007 dated 30.10.2007.

2. The brief facts which are necessary for disposal of the above criminal revision are follows:

The respondent herein is the legally wedded wife of the petitioner. The resondent submitted a petition under the provisions contained in the Protection of Women From Domestic Violence Act, 2005 (hereinafter referred to as the "Act") to the Protection Officer and the Protection Officer had sent a domestic incident report to the Court and the same has been taken on file in C.M.P.No.1397 of 2007. In the said application, the respondent has alleged that from the time of marriage itself, the respondent's mother-in-law and the brothers of her husband harassed her demanding dowry. It is further alleged that not only the respondent but the infant child was also harassed and the respondent and their child were driven out of the household on 23.6.2006. In respect of the said occurrence, a complaint was lodged by the respondent before the All Women Police Station on 23.10.2006, but no action whatsoever had been taken. On receipt of the summons from the Court, the petitioner has filed a petition questioning the maintainability of CMP.No.1397/2007 on the following grounds.
i) The Court has no jurisdiction to entertain the petition in view of the

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pendency of C.C.No.30/2007 on the file of the Judicial Magistrate Court, Chidambaram.

ii) Section 210 of Cr.P.C., has to be followed.

iii) HMOP.No.78 of 2006 has been filed by the respondent seeking divorce pending before the Principal Subordinate Judge, Virudhachalam.

iv) The present petition will amount to double jeopardy. The learned Magistrate, after considering the above said contentions put forth by the petitioner, rejected the same. Being aggrieved by that, the petitioner has filed the above criminal revision petition.

3. Heard the learned counsel for the petitioner and perused the order passed by the learned Magistrate.

4. The learned counsel for the petitioner submits that the alleged occurrence in respect of which the proceedings have been initiated before the court below under the Act took place as early as 27.6.2006 and in respect of that already a criminal case is pending, whereas the said Act came into force only with effect from 26.10.2006 and as such the Act is not applicable to the facts of this case and the respondent is not entitled to seek any remedy under the Act. Learned counsel for the petitioner submitted that the application itself was not filed in proper format and no specific relief has been sought for in the petition.

5. I have carefully considered the submissions made by the learned counsel for the petitioner.

6. Though the allegations made against the petitioner by the respondent relates to the occurrence that has taken place on 27.6.2006, one of the allegations is that the respondent and the child have been driven out of the household and they are unable to maintain themselves. It is not the case of the petitioner that the respondent and the child are living in the house along with the petitioner. Even as on today, the respondent and the child are living away from the household.

7. Section 3 of the Act defines domestic violence. Section 3(a) of the Act reads as follows:-

> 3. Definition of domestic violence.- For the purposes of this Act, any act, omission or commission or conduct of the respondent shall constitute domestic violence case it-
> a) harms or injuries or endangers the health, safety, life, limp or well-being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse."

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Explanation – I (iv) (c) reads as follows:-

iv) "economic abuse" includes-

c) prohibition or restriction to continued access to resources or facilities which the aggrieved person is entitled to use or en joy by virture of the domestic relationship including access to the shared household."

8. A reading of the above said definition shows that the allegations made by the respondent against the petitioner attracts the above said explanation and squarely falls within the definition of domestic violence namely, economic abuse, since the respondent has been driven out of the said household. Admittedly, the respondent and the child are not living in the house along with the petitioner and thus the respondent's access to the shared household is restricted and as per the allegations made by the respondent she has been prohibited from accessing the shared household and therefore the domestic violence is continuing even after the coming into force of the Act. Therefore, even though the Act has come into force with effect from 26.10.2006, the petition has been rightly entertained by the learned Magistrate. The said Act being a benevolent piece of legislation to protect women from domestic violence, technicalities cannot stand in the way of the Court entertaining the said application. Even if the petition is not in proper form and the respondent has not sought for any particular relief, the relief can always be moulded by the Court below. Therefore, the said contention put forth by the learned counsel for the petitioner cannot be countenanced and the same are devoid of merits and accordingly rejected.

9. The contention of the learned counsel for the petitioner that in view of the pendency of C.C.No.30 of 2007 on the file of the learned Judicial Magistrate, Chidamabaram and H.M.O.P.No.78 of 2006 on the file of the Principal Sub Court, Virudhachalam, the above application filed under the Act ought not to have been entertained by the Court below is concerned, it has to be pointed out that the relief sought for the aforesaid two proceedings is totally different from the relief that is sought for in the present application. Learned counsel for the petitioner is unable to point out any bar in the Act for entertaining the application during the pendency of the aforesaid proceedings. Therefore, the said contention of the learned counsel for the petitioner cannot be countenanced. It has to be pointed out that Section 210 of the Criminal Procedure Code is not at all attracted to the facts of this case and as such the contention of the learned counsel for the petitioner based on Section 210 of the Criminal Procedure Code cannot be countenanced. Similarly the question of double jeopardy does not arise in this case.

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10. For the said reasons, the criminal revision petition fails and the same is dismissed. Consequently, connected misceelaneous petition is also dismissed.

sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

Kb

1. The District Munsif-cum-Judicial Magistrate,
   Thittakudi.

2. The Judicial Magistrate Court, Chidambaram.

3. The Principal Subordinate Judge, Virudhachalam.

+ one cc to Mr. Anabaya Chozhan, Advocate, SR.72912

VRK(CO)
RP 05.01.2008.

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